

## 227.7200

Government and the contractor that establishes those responsibilities.

(c) If the contractor is not and will not be the data repository manager, do not require a contractor or subcontractor to deliver technical data marked with limited rights legends to a data repository managed by another contractor unless the contractor or subcontractor who has asserted limited rights agrees to release the data to the repository or has authorized, in writing, the Government to do so.

(d) Repository procedures may provide for the acceptance, delivery, and subsequent distribution of technical data in storage media other than paper, including direct electronic exchange of data between two computers. The procedures must provide for the identification of any portions of the data provided with restrictive legends, when appropriate. The acceptance criteria must be consistent with the authorized delivery format.

### Subpart 227.72—Rights in Computer Software and Computer Software Documentation

SOURCE: 60 FR 33482, June 28, 1995, unless otherwise noted.

#### 227.7200 Scope of subpart.

This subpart—

(a) Prescribes policies and procedures for the acquisition of computer software and computer software documentation, and the rights to use, modify, reproduce, release, perform, display, or disclose such software or documentation. It implements requirements in the following laws and Executive Order:

- (1) 10 U.S.C. 2302(4).
- (2) 10 U.S.C. 2305 (subsection (d)(4)).
- (3) 10 U.S.C. 2320.
- (4) 10 U.S.C. 2321.
- (5) 10 U.S.C. 2325.
- (6) Executive Order 12591 (subsection 1(b)(6)).

(b) Does not apply to computer software or computer software documentation acquired under GSA schedule contracts.

#### 227.7201 Definitions.

(a) As used in this subpart, unless otherwise specifically indicated, the

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terms “offeror” and “contractor” include an offeror’s or contractor’s subcontractors, suppliers, or potential subcontractors or suppliers at any tier.

(b) Other terms used in this subpart are defined in the clause at 252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation.

### 227.7202 Commercial computer software and commercial computer software documentation.

#### 227.7202–1 Policy.

(a) Commercial computer software or commercial computer software documentation shall be acquired under the licenses customarily provided to the public unless such licenses are inconsistent with Federal procurement law or do not otherwise satisfy user needs.

(b) Commercial computer software and commercial computer software documentation shall be obtained competitively, to the maximum extent practicable, using firm-fixed-price contracts or firm-fixed-priced orders under available pricing schedules.

(c) Offerors and contractors shall not be required to—

(1) Furnish technical information related to commercial computer software or commercial computer software documentation that is not customarily provided to the public except for information documenting the specific modifications made at Government expense to such software or documentation to meet the requirements of a Government solicitation; or

(2) Relinquish to, or otherwise provide, the Government rights to use, modify, reproduce, release, perform, display, or disclose commercial computer software or commercial computer software documentation except for a transfer of rights mutually agreed upon.

#### 227.7202–2 [Reserved]

### 227.7202–3 Rights in commercial computer software or commercial computer software documentation.

(a) The Government shall have only the rights specified in the license under which the commercial computer software or commercial computer software documentation was obtained.

(b) If the Government has a need for rights not conveyed under the license customarily provided to the public, the Government must negotiate with the contractor to determine if there are acceptable terms for transferring such rights. The specific rights granted to the Government shall be enumerated in the contract license agreement or an addendum thereto.

**227.7202-4 Contract clause.**

A specific contract clause governing the Government's rights in commercial computer software or commercial computer software documentation is not prescribed. As required by 227.7202-3, the Government's rights to use, modify, reproduce, release, perform, display, or disclose computer software or computer software documentation shall be identified in a license agreement.

**227.7203 Noncommercial computer software and noncommercial computer software documentation.**

**227.7203-1 Policy.**

(a) DoD policy is to acquire only the computer software and computer software documentation, and the rights in such software or documentation, necessary to satisfy agency needs.

(b) Solicitations and contracts shall—

(1) Specify the computer software or computer software documentation to be delivered under a contract and the delivery schedules for the software or documentation;

(2) Establish or reference procedures for determining the acceptability of computer software or computer software documentation;

(3) Establish separate contract line items, to the extent practicable, for the computer software or computer software documentation to be delivered under a contract and require offerors and contractors to price separately each deliverable data item; and

(4) Require offerors to identify, to the extent practicable, computer software or computer software documentation to be furnished with restrictions on the Government's rights and require contractors to identify computer software or computer software documentation

to be delivered with such restrictions prior to delivery.

(c) Offerors shall not be required, either as a condition of being responsive to a solicitation or as a condition for award, to sell or otherwise relinquish to the Government any rights in computer software developed exclusively at private expense except for the software identified at 227.7203-5(a) (3) through (6).

(d) Offerors and contractors shall not be prohibited or discouraged from furnishing or offering to furnish computer software developed exclusively at private expense solely because the Government's rights to use, modify, release, reproduce, perform, display, or disclose the software may be restricted.

(e) For acquisitions involving major weapon systems or subsystems of major weapon systems, the acquisition plan shall address acquisition strategies that provide for computer software and computer software documentation, and the associated license rights, in accordance with 207.106(S-70).

[60 FR 33471, June 28, 1995 as amended at 72 FR 51189, Sept. 6, 2007]

**227.7203-2 Acquisition of noncommercial computer software and computer software documentation.**

(a) Contracting officers shall work closely with data managers and requirements personnel to assure that computer software and computer software documentation requirements included in solicitations are consistent with the policy expressed in 227.7203-1.

(b)(1) Data managers or other requirements personnel are responsible for identifying the Government's minimum needs. In addition to desired software performance, compatibility, or other technical considerations, needs determinations should consider such factors as multiple site or shared use requirements, whether the Government's software maintenance philosophy will require the right to modify or have third parties modify the software, and any special computer software documentation requirements.

(2) When reviewing offers received in response to a solicitation or other request for computer software or computer software documentation, data